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No. 199

Supreme Court of the United States

October Term, 1959

MARY JO WILLIAMS, Administratrix of the ESTATE OF PERCY L. WILLIAMS and MARY JO WILLIAMS, Transferee of the assets of PERCY L. WILLIAMS,
Defendants-Appellants,

vs

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Defendants-Appellants,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray for a writ of certiorari to review a judgment of the United States Court of Appeals for the Sixth Circuit, which affirmed a judgment of the United States District Court for the Southern District of Ohio.

I.

THE OPINIONS OF THE COURT BELOW

The Opinion of the Court of Appeals for the Sixth Circuit was rendered February 27, 1959, and a Petition for re-

hearing overruled April 10, 1959, and is reported in 264 F.2d 227. The Opinion of the United States District Court is reported in 164 F. Supp. 874, and are attached hereto (App. 3a to 9a).

II.

JURISDICTION

1. The jurisdiction of this Court to entertain a Petition for a Writ of Certiorari and the allowance thereof is provided for in Judicial Code — 28 U.S.C. Sec. 1254.

2. The date of the Judgment of Affirmance to be reviewed is February 27, 1959, together with the overruling of the Petition for rehearing on April 10, 1959.

3. The ruling of the Court of Appeals for the Sixth Circuit is in conflict with several other decisions of the Court of Appeals and is directly contrary to the decision of this Court in the case of *Flora* v. *U. S. A.*, 357 U.S. 63.

4. The jurisdiction of this Court is sustained by Rule 19 Sec. 1 (b).

III.

STATEMENT OF THE CASE

A summary statement of the matters involved is as follows: (taken from 264 F.2d 227)

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Action by United States against income taxpayer's transferee, personal representative, for foreclosure of Federal Lien for Income Taxes. Transferee - personal representative counterclaim to enjoin collection of the taxes on ground that tax assessment was void because Statutory

Notice of Deficiency upon which assessment was predicated had not been mailed to taxpayer at his last known address. The United States District Court for the Southern District of Ohio (164 F. Supp. 874) entered judgment for the United States, and transferee - personal representative appealed. The Court of Appeals held that where prior to his death income-taxpayer had filed with District Director of Internal Revenue a Power of Attorney in which taxpayer authorized and requested that all communications and other matters be mailed to address of the named attorney in fact, Director's mailing by registered mail of Statutory Notice of Deficiency to such attorney after taxpayer's death constituted a minimum compliance with the mailing procedure authorized by the Internal Revenue Code, even though attorney returned Notice to Director with advice that Power of Attorney had been revoked by taxpayer's death, and though Director had on file a residence and business address for the taxpayer."

B.

STATEMENT OF FACTS

(Taken from Government Brief in Lower Court)

In 1953 an investigation was conducted by the Internal Revenue Service into the income tax liabilities of Percy L. Williams for the years 1944, 1945 and 1946, which investigation culminated in late 1955. On July 28, 1954, Percy L. Williams filed with the District Director of Internal Revenue for the District of Ohio a power of attorney wherein Percy L. Williams appointed Sol Goodman as his attorney with respect to all matters involving federal taxes, particularly for the years 1944, 1945, 1946 and 1948. (Compl. par. V; Ans. par. III; Govt. Ex 1-E.) Mr. Williams' residence *at that time was 1352 William Howard Taft Road, Cincinnati, Ohio.* The power of attorney also

authorized and requested that all communications and other matters be *mailed to Sol Goodman,* 1016 Union Trust Building, Cincinnati, Ohio. (Compl. par. V; Ans. par. III, IV; Govt. Ex. 1-E.)

Percy L. Williams died November 3, 1955.

Thereafter, on December 2, 1955, the Commissioner of Internal Revenue sent by registered mail a statutory notice of deficiency notifying Percy L. Williams of proposed deficiencies in income tax and penalties for the years 1944, 1945 and 1946 to *Percy L. Williams, care of Sol Goodman,* 1016 Union Trust Building, Cincinnati, Ohio. (Govt. Ex. 1-D.)

Prior to December 2, 1955, no notice of fiduciary relationship was ever filed by or on behalf of Mrs. Mary Jo Williams with the Commissioner of Internal Revenue or with the District Director of Internal Revenue for the District of Ohio or their representatives. (Compl. par. XI; Ans. par. VIII.)

On December 7, 1955, the office of the District Director of Internal Revenue at Cincinnati received the statutory notice of deficiency referred to above from Mr. Sol Goodman, advising that his Power of Attorney was revoked by death of Williams. (Govt. Ex. 1-G.) Thereafter, on December 8, 1955, the District Director returned the statutory notice to Sol Goodman. (Compl. par. VII-e; Ans. par. IV; Govt. Ex. 1-H.)

On December 21, 1955, the defendant, Mary Jo Williams, was appointed Administratrix of the Estate of Percy L. Williams. No Petition on behalf of Percy L. Williams or his estate was filed with the Tax Court of the United States within ninety (90) days of the issuance of the statutory notice. Thereafter, on March 30, 1956, the Commissioner of Internal Revenue made a deficiency assessment of income taxes and penalties for the years 1944, 1945 and 1946 as follows (Compl. par. IX; Govt. Exs. 1-A, 1-H):

Kind of Assessment	1944	1945	1946
Income Tax	$9,806.09	$2,603.88	$1,250.68
Interest	6,496.29	1,568.75	678.45
293 (b) Fraud Penalty	5,593.38	1,301.94	625.34
294 (d) Penalty	423.60	187.25	

These assessments were for the same years and same amounts as set out in the statutory notice of deficiency issued by the Commissioner of Internal Revenue to Percy L. Williams on December 2, 1955. *Notice was given to and demand made for the taxes and penalties assessed on April 2, 1956.* (Govt. Exs. 1-B, 1-C and 4.) Notice of tax lien in the amount of $30,535.56 was filed with the Recorder of Hamilton County, Cincinnati, Ohio, on April 23, 1956 (Govt. Ex. 3.).

On *August 17, 1956*, the Acting District Director of Internal Revenue for the District of Ohio filed with the Administratrix, Mary Jo Williams, a statement of claim of taxes due the United States from the Estate of Percy L. Williams in the amount of $30,535.56. (Compl. par. XII-a; Ans. par. VIII; Govt. Ex. 6.) The claim was rejected and disallowed on September 14, 1956, by the defendant. (Compl. par. XII-b; Ans. par. VIII; Govt. Ex. 6.)

The Power of Attorney provided that all communications be mailed *to* Sol Goodman. It did not authorize the mailing of notices to Percy L. Williams care of Sol Goodman. It did not indicate that Percy Williams' address was in care of Sol Goodman.

From those facts, the following questions arise:

1. Where a taxpayer whose address, both residence and business, is known by the Commissioner, and the Commissioner has on file a Power of Attorney designating that notices are to be mailed to said attorney, and the Commissioner instead mails a notice to the taxpayer in care of the attorney, who immediately returns such notice to the Commissioner and advises him that the taxpayer is de-

ceased, is such a notice compliance with the provisions of the Internal Revenue Code?

2. Where the Commissioner knows the taxpayer's last address at both his business and residence, does the Commissioner comply with even the "minimum" requirements of law by sending a notice to an attorney whose power to act as attorney had been revoked by death?

3. May the Commissioner institute an action in the District Court to have a tax liability established without first issuing the required Statutory Notice of Deficiency?

4. Where, as in this case, it is evident that the amount claimed is in excess of the total estate of the deceased taxpayer, thus making it impossible to pay the assessed tax and sue for a refund, can the Courts effectively deny a taxpayer the relief provided by either 28 U.S.C., Section 1346 (a) (1) through a suit in the District Court after payment (*Flora* v. *U. S. A.*, 357 U.S. 63) as well as deny the taxpayer the right of a hearing in the Tax Court of the United States for a redetermination of the tax.

5. Where no congressional enactment provides for a proceeding for the determination as well as the collection of Income Taxes, may a United States District Court entertain a proceeding like the present one?

C.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The decision of the Court of Appeals for the Sixth Circuit decided a Federal question of substance in a manner contrary to the decision by the United States Court of Appeals, District of Columbia Circuit, in the case of *D'Andrea* v. *C. I. R.*, 263 F.2d 904.

2. The decision of the Court of Appeals for the Sixth Circuit is in conflict with and contrary to the holding in

First National Bank of Chicago, Trustee, v. *C. I. R.*, 255 F.2d 759.

3. The decision of the Court of Appeals for the Sixth Circuit is in conflict with the decision in the case of *Steiner* v. *Nelson*, 259 F.2d 853.

4. The decision of the Court of Appeals for the Sixth Circuit is in conflict with the decision of this Court in the case of *Flora* v. *U. S.*, 357 U.S. 63.

5. Unless a decision is made by this Honorable Court upon the state of facts existing in the present case, a great confusion will arise in the administration of the Internal Revenue laws of the United States in view of the conflict between the decisions of the different circuits of the Court of Appeals as well as the decisions of different members constituting the Sixth Circuit of the Court of Appeals and the conflict of the decision herein with a prior decision of the United States Supreme Court.

WHEREFORE, these petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals for the Sixth Circuit commanding that Court to certify and to send to this Court for its review and determination, on a day therein named, a full and complete transcript of

IV.

SPECIFICATION OF ERRORS

1. The Court of Appeals for the Sixth Circuit erred in affirming the decision of the United States District Court. The Court of Appeals should have reversed and ordered a dismissal of the action on the ground that there is no congressional enactment providing for such an action.

2. The Court of Appeals for the Sixth Circuit erred in finding that the petitioners were liable for the tax, and that the individual petitioner was liable as transferee.

3. The Court of Appeals erred in finding that a sufficient Notice of Deficiency had been issued by the Commissioner.

ARGUMENT

I.

On February 27, 1959, the Court of Appeals for the Sixth Circuit affirmed the United States District Court decision in this case. In the Opinion of the Court, it was stated:

> "The Commissioner of Internal Revenue sent the challenged notice of deficiency by registered mail addressed *to the taxpayer* in care of and at the address of the attorney in fact *as requested and directed in the* power of attorney on file".

The Power of Attorney clearly shows that such mailing was contrary to the instructions contained therein, which were:

> "I authorize and request that all communications regarding any matter or matters * * * be sent to Sol Goodman * * *".

Nothing in the Power of Attorney designated the address of Percy L. Williams as in care of Sol Goodman. The Court of Appeals then states in its Opinion:

> "The attorney returned the notice to the District Director, advising that his power of attorney had been revoked by the death of the taxpayer".

At that precise moment, this Court, in the interest of justice, ought to give due and serious consideration whether or not the District Director performs his duties, if he does nothing further. Does Internal Revenue Code Section 6212 (b) (1); 6213 (a), (c), 7421, 26 U. S. C. A., etc. impose any duty or obligation on the part of the Dis-

trict Director when he finds that the taxpayer to whom he is required to give notice is deceased? The Statute gives him a right to send the registered mail notice to the taxpayer's last known address. *Nothing in the power of attorney involved in this case designates the attorney's address as the taxpayer's last known address.* It only authorizes the District Director to send communications concerning his tax matters to the attorney, not to the taxpayer in care of the attorney.

The Court, in its Opinion, states:

> "Appellants' contention that the assessment is void because the notice of deficiency was not sent to the "last known address" of the taxpayer, is based upon the fact that the District Director had in his file a residence address and a business address of the taxpayer."
>
> "But revocation of the power of attorney did not erase the taxpayer's request therein to the Director that 'all communications and other matters be mailed' *to the taxpayer at the attorney's address.*"

This statement, in the Opinion, is directly contrary to the express provisions of the power of attorney. Nowhere in the power of attorney is there authority to mail communications and other matters *to the taxpayer at the attorney's address.*

The Court further states in the Opinion:

> "While we must agree with appellants that here the Director did not exert himself to see that the notice of deficiency reached proper hands, *still we cannot say there was not minimum compliance with the mailing procedure authorized by* § 6212 * * *."

It is a far cry from justice to have this Court justify the Director's conduct in this case as "there was not minimum compliance". The requirement of the Statute is that there be a notice to the taxpayer. Clearly, in this case, notice

never reached the taxpayer or the taxpayer's representative. The authority of the attorney, as the Court points out in the Opinion, ceased with the death of the taxpayer.

In an Opinion filed by the United States Court of Appeals for the District of Columbia Circuit, *D'Andrea* v. *Commissioner of Internal Revenue*, 263 F.2d 904, we see a totally different consideration by that Circuit Court of Appeals of the rights of the taxpayer. In that case, the power of attorney did designate the taxpayer's address. It further authorized the sending of communications to the attorney. In that case, the Commissioner sent a registered mail notice to the taxpayer at the address given, and this was returned. He sent a copy of the notice to the attorney and, apparently, notice reached the taxpayer within the ninety days because, during that time, a Petition was prepared and mailed and reached the Tax Court of the United States on the 91st day. The Court of Appeals, in that decision, considered the language of the power of attorney and concluded that the Commissioner had not performed his duty in mailing the registered mail to the taxpayer at an address, which was not his address at the time of the mailing, or the mailing of a copy of the notice to the attorney, and the Court reversed the holding of the Tax Court and ordered the Entry of a Judgment, finding that the ninety day notice was not legally given. It is interesting to note that the Court of Appeals considers the language in the present case in the decision of *United States* v. *Williams*, 164 F. Supplement 874, that being the decision of Judge Druffel and quotes the language from the power of attorney in said decision.

We ask the Court's attention and examination of the language contained in the power of attorney in the *D'Andrea case*, which states, "And I hereby request and direct that all correspondence, documents, warrants or other data in connection with this matter be sent *in care of Charles*

H. Renthal". Compare that with the language of the power of attorney in the present case in which it is set forth "authorize and request that all communications concerning his tax matters be mailed to Sol Goodman". Nothing here authorized the Director to send a notice to Williams in care of Sol Goodman.

In commenting on the decision in *Commissioner of Internal Revenue* v. *Stewart*, 186 F.2d 239, the Court stated:

> "• • • where the Sixth Circuit held notice by registered mail to the taxpayer's attorney in fact was sufficient. There the attorney in fact was acting under a broader power than we have here; the notice was registered and the taxpayer was held to have waived any infirmity in the giving of notice by duly filing a Petition for redetermination in the Tax Court within the 90-day period, thereby showing that he seasonably received the information contained in the notice to his attorney."

This Court in *Flora* v. *United States*, 357 U.S. 63 stated:

> "A taxpayer too poor to pay the full amount of the tax wrongfully assessed or collected may litigate in the Tax Court of the United States without any advance payment".

The Statement of Facts set forth herein indicates that the tax assessed and interest will run approximately Forty Thousand ($40,000.00) Dollars. The record further indicates that the total estate will not amount to half of that. It is thus obvious that it is impossible to pay the tax and sue for a refund. The only avenue for relief left for the taxpayer was a proper Notice of Deficiency upon which could be based a Petition to the Tax Court of the United States. This clearly illustrates how real and substantial is the right of the taxpayer to a Notice of Deficiency. Under such circumstances, the duty of the Court is to

give effect to the intent of Congress, and in so doing, of course, your first reference is to the literal meaning of words employed. The answer is not in the decision of the Court of Appeals, which overlooks the language in the Power of Attorney and concludes that "still we cannot say there was not minimum compliance with the mailing procedure authorized by Section 6212 * * *". *Property rights should never be taken under any theory of "minimum compliance." The better rule is to give the taxpayer "maximum protection."*

II.

FAILURE TO FILE TIMELY CLAIM BARRED ACTION

The taxpayer further contends that Ohio Revised Code 2117.06, requiring that creditors having claims against an estate must present the claims to the executor in writing within four (4) months. Ohio Courts hold (*Prudential Insurance Company* v. *Joyce Building Realty Company*, 143 O. S. 364) that this is a Statute of Limitation, which bars creditors' claims unless presented to an Executor. The admitted fact herein is that this Statute was disregarded by the United States. The United States Court of Appeals failed to comment on this contention in its Opinion. This was directly in conflict with *Rice* v. *Sayers*, 198 F.2d 724; *Nelson* v. *Miller*, 201 F.2d 277; and the decision of this Court in *Commissioner of Internal Revenue* v. *Stern*, 357 U.S. 39.

III.

COURT LACKED JURISDICTION

We have heretofore pointed out that there is no statutory provision for a proceeding of this sort. If the Com-

missioner had a valid lien, and this were an action for the foreclosure of such a lien, then, of course, the taxpayer was not entitled to have the District Court consider the issue as to whether or not there was tax liability. The Court of Appeals overlooked mentioning this point in its Opinion, but, during oral argument, indicated that though it found no Statute providing for such a hearing in District Court, yet error, if any existed, was cured because the District Court did not preclude the taxpayer from offering evidence. It is our contention that if a proceeding is had in the District Court where the Court lacks jurisdiction that a litigant is not required to try his case before a Court having no jurisdiction over the subject matter.

IV.

NO DEFICIENCY NOTICE TO TRANSFEREE

The Complaint charged one of the petitioners with liability as a Transferee. This was in violation of 26 U. S. C., Section 6212, which requires that a Statutory Notice of Deficiency be sent to the Transferee. No claim was made that such a Notice was ever sent.

CONCLUSION

This case presents a question where the entire estate left by a taxpayer to his widow is being appropriated by the Government under the guise of its Internal Revenue Laws with a total failure to afford the taxpayer the protection afforded him by the Statute to have a hearing before the Tax Court of the United States. The decision of the Court of Appeals is "apologetic", but nevertheless, deprives the appellants of their property without due process of law under the semblance of "minimum compliance" by the Government.

The decision of the Court of Appeals is in conflict with other Courts of Appeal decisions and in conflict with what this Court has previously stated. This presents a case of a gross and grave miscarriage of justice and justifies the review and consideration by this Court.

Respectfully submitted,

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APPENDIX

2117.06. Presentation and Allowance of Creditors Claims; Property Tax Assessments.

All creditors having claims against an estate shall present their claims to the executor or administrator in writing, including claims arising out of contract, out of tort, or cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated. All claims shall be presented within four months after the date of the appointment of the executor or administrator . . .

2117.07 (10509-134). Presentation of Claims After Four Months.

Anyone having a claim against an estate who fails to present his claim to the executor or administrator within the time prescribed by law may file a petition in the probate court for authority to present his claim after the expiration of such time. Such petition forthwith shall be assigned for hearing and at least five days before the date of the hearing the claimant shall give written notice thereof to the executor or administrator and to such other parties as the court may designate. The court may authorize such claimant to present his claim to the executor or administrator if, on the hearing, the court finds as follows:

(A) That the claimant did not have actual notice of the decedent's death or of the appointment of the executor or administrator in sufficient time to present his claim within the period prescribed by section 2117.06 of the Revised Code;

(B) That the claimant's failure to present his claim was due to the absence of the executor or administrator from

his usual place of residence or business during a substantial part of such period or was due to any wrongful act or statement on the part of the executor or administrator or his attorney;

(C) That the claimant was subject to any legal disability during such period or any part thereof.

A claim which is not presented within nine months from the appointment of the executor or administrator shall be forever barred as to all parties, including devisees, legatees, and distributees and no payment shall be made nor any action maintained thereon, except as otherwise provided in sections 2117.37 to 2117.42, inclusive, of the Revised Code, with reference to contingent claims.

The executor or administrator is not accountable to any such claimant for any assets which he may lawfully have paid of or distributed prior to service upon him of notice of the hearing on such petition, nor for any other action which he may lawfully have taken prior to such time; and such claim shall not prevail against creditors, legatees, and distributees who have received payment or distribute on from the assets prior to the service of such notice, or against a surviving spouse who has made her election to take under the will or under sections 2105.01 to 2105.21, inclusive, of the Revised Code, prior to such time, or against bona fide purchasers and other persons who have dealt with the executor or administrator in good faith.

This section applies to any person who is required to give written notice to the executor or administrator of a motion or application to revive an action pending against the decedent at the date of death. (125 v 903. Eff. 10-1-53.)

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Decided February 27, 1959.)

(CAPTION OMITTED)

Before: MARTIN, Chief Judge; ALLEN, Circuit Judge, and MATHES, District Judge.

PER CURIAM:

A deceased Ohio taxpayer's transferee and personal representative appeals from a judgment decreeing, among other relief, foreclosure of the Government's lien for income taxes, and dismissal of a counterclaim to enjoin collection of the taxes, claimed under an assessment made after notice of deficiency allegedly given as required by statute. [Int. Rev. Code, §§ 6212 (b) (1), 6213 (a), (c), 7421, 26 U. S. C. A., §§ 6212 (b) (1); 6213 (a); (c), 7421.]

Appellants contend that the assessment is void because the statutory notice of deficiency upon which it is predicated was not mailed to the taxpayer "at his last known address" within the meaning of Int. Rev. Code, § 6212 (b) (1).

There is no dispute as to the facts. A little more than one year prior to his death on November 3, 1955, the taxpayer had filed with the District Director of Internal Revenue for the District of Ohio a power of attorney wherein the taxpayer "authorized and requested that all communications and other matters be mailed to the following address: . . . [the name and address of his attorney in fact]."

On December 2, 1955, prior to the appointment of a personal representative to administer the estate of the dece-

dent and before any notice of fiduciary relationship was filed under Int. Rev. Code, § 6903, the Commissioner of Internal Revenue sent the challenged notice of deficiency by registered mail addressed to the taxpayer in care of and at the address of the attorney in fact as requested and directed in the power of attorney on file. The attorney returned the notice to the District Director, advising that his power of attorney had been revoked by the death of the taxpayer.

No petition for a redetermination of the claimed deficiency was ever filed with the Tax Court on behalf of the taxpayer or his estate, and the assessment in controversy followed. [Int. Rev. Code, § 6213 (a), (c); *cf. United States* v. *Flora*, 357 U. S. 63 (1958).]

Appellants' contention that the assessment is void because the notice of deficiency was not sent to the "last known address" of the taxpayer, is based upon the fact that the District Director had in his file a residence address and a business address of the taxpayer.

It is true of course, as appellants say, that death of the taxpayer revoked the authority of the attorney. [*Hunt* v. *Rousmanier's Administrators*, 21 U. S. (8 Wheat.) 173 (1823).] But revocation of the power of attorney did not erase the taxpayer's request therein to the Director that "all communications and other matters be mailed" to the taxpayer at the attorney's address.

While we must agree with appellants that here the Director did not exert himself to see that the notice of deficiency reached proper hands, still we cannot say there was not minimum compliance with the mailing procedure authorized by § 6212 (a), (b) (1) of the Internal Revenue Code. [*Cf.*: *Dolezilek* v. *Commissioner*, 212 F. 2d 458 (D.C. Cir. 1954); *Commissioner* v. *Stewart*, 186 F. 2d 239 (6th Cir. 1951); *Clark's Estate* v. *Commissioner*, 173 F. 2d 13 (2d Cir. 1949); *Welch* v. *Schweitzer*, 106 F. 2d 885 (9th

Cir. 1939); *Dilks* v. *Blair*, 23 F. 2d 831 (7th Cir. 1927); *Gregory* v. *United States*, 57 F. Supp. 962 (Ct. Cl. 1944), *cert. denied*, 326 U. S. 747 (1945).]

Upon the findings of fact and conclusions of law made by District Judge Druffel, the judgment is affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

(CAPTION OMITTED)

This cause, having come on for trial before the Court, sitting without a jury, on the 19th day of February 1958, and the Court having heard the testimony, examined the evidence and the briefs filed by the respective parties, and being fully advised in the premises thereof, hereby enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. This action was authorized by the Commissioner of Internal Revenue, a delegate of the Secretary of the Treasury and was brought under the direction of the Attorney General of the United States.

2. Mary Jo Williams resides at 1352 William Howard Taft Road, Cincinnati, Ohio, and prior to his death, Percy L. Williams also resided in Cincinnati, Ohio.

3. On July 28, 1954, Percy L. Williams filed with the District Director of Internal Revenue of Ohio a power of attorney with respect to all matters involving his federal taxes, particularly for the years 1944, 1945, 1946, and 1948. This power of attorney authorized and requested

that all communications relative to Williams' tax matters be mailed to Mr. Sol Goodman, 1016 Union Trust Building, Cincinnati, Ohio.

4. In 1953 an investigation was conducted by the Internal Revenue Service into the income tax liabilities of Percy L. Williams for the taxable years 1944, 1945, and 1946. This investigation was culminated late in 1955.

5. Percy L. Williams died on November 3, 1955.

6. On December 2, 1955 the Commissioner of Internal Revenue issued a statutory notice of deficiency (90-day letter) to Percy L. Williams asserting a deficiency of income taxes, plus penalties and interest for the taxable years 1944, 1945, and 1946. The statutory notice of deficiency was sent by registered mail to Mr. Percy L. Williams, c/o Sol Goodman, 1016 Union Trust Building, Cincinnati, Ohio.

7. Prior to the issuance of the statutory notice of deficiency there had never been filed with the Commissioner of Internal Revenue or the District Director of Internal Revenue for Ohio any notice of fiduciary relationship on behalf of Mary Jo Williams.

8. On March 30, 1956, the Commissioner of Internal Revenue made a deficiency assessment of income taxes, penalties and interest against Percy L. Williams for the taxable years 1944, 1945, and 1946 as follows:

Kind of Assessment	1944	1945	1946
Income Tax	$ 9,806.09	$2,603.88	$1,250.68
Interest	6,496.19	1,568.75	678.45
293(b) Fraud Penalty	6,593.38	1,301.94	625.34
294(d) Penalty	423.60	187.26	---
	$22,319.26	$5,661.83	$2,554.47

These assessments were for the same years and in the same amounts as set out and asserted in the statutory notice of deficiency sent to Percy L. Williams on December 2, 1955.

9. On April 2, 1956, notice was given and demand made for the payment of the taxes, penalties and interest as assessed on March 30, 1956.

10. Notice of tax lien in the sum of $30,535.56, representing the taxes, penalties and interest as assessed against Percy L. Williams, on March 30, 1956, was filed with the Recorder of Hamilton County, Cincinnati, Ohio, on April 23, 1956.

11. No part of the assessment made against Percy L. Williams on March 30, 1956, has been paid.

12. The deficiencies in income taxes asserted and assessed against Percy L. Williams on March 30, 1956, were due to fraud on the part of Percy L. Williams with an intent to evade tax.

13. On August 17, 1956, the Acting District Director of Internal Revenue of Ohio filed with Mary Jo Williams, the administratrix of the estate of Percy L. Williams, a statement of claim for taxes as assessed on March 30, 1956, in the total amount of $30,535.56.

14. On September 14, 1956, Mary Jo Williams, administratrix of the estate of Percy L. Williams acknowledged that the claim was filed and gave notice that said claim was rejected and disallowed. No part of the claim filed with Mary Jo Williams has been paid to this date.

15. At the time of his death, Percy L. Williams was the owner of real property and improvements thereon described as:

> Part Lot 9 F.B Williams Sub. Cinti. Hamilton County known as 1352 William Howard Taft Road. Auditor Pl. 62-1-106

16. Also at the time of his death, Percy L. Williams was the owner of the following personal property:

Cash on hand	$1,500.00
Central Trust Co. account	19.25
1954 Ford Tudor automobile Model U4 Serial No. U4NC147404	
51 Shares of Stock in Playbowl, Inc., held by F. D. Henry, Trustee	

17. At the time of his death, Percy L. Williams was also the owner of a certain contract right resulting from an agreement with Mrs. Ruth Levitch and that at present, under such contract agreement there is due and owing from Mrs. Levitch to the estate of Percy L. Williams the sum of $4,870.46.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action by virtue of Sections 1340 and 1345, Title 28 U.S.C.

2. The statutory notice of deficiency issued by the Commissioner of Internal Revenue and sent by registered mail on December 2, 1955, was sent to the last known address of Percy L. Williams within the meaning of Section 272 (a) and (k) of the Internal Revenue Code of 1939.

3. Mary Jo Williams is indebted to the United States of America as administratrix of the estate of Percy L. Williams in the sum of $30,535.56 plus interest from the date of the assessment until paid.

4. The United States of America has a lien for taxes in the sum of $30,535.56 plus interest until paid on all property, real and personal still in control of the defendant, Mary Jo Williams, either as administratrix of the estate of Percy L. Williams or as distributee of the estate of Percy L. Williams.

5. The United States of America has a lien for federal taxes on the sum of $4,870.46 that is due from Mrs. Ruth Levitch to the estate of Percy L. Williams.

6. The United States of America is entitled to have its lien for taxes foreclosed against any assets remaining in the control of Mary Jo Williams either as administratrix of the estate of Percy L. Williams or as distributee of the estate of Percy L. Williams.

7. The United States is entitled to a deficiency judgment against Mary Jo Williams as administratrix of the estate of Percy L. Williams in the amount of any assessment remaining unsatisfied after any foreclosures or payments against the tax liabilities pursuant to this action, plus interest until paid.

JOHN H. DRUFFEL
United States District Judge